



AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; REVISING LAWS TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006; CLARIFYING DEFINITIONS; CLARIFYING WHO MUST BE A MEMBER OF THE SYSTEM; CLARIFYING FAMILY LAW ORDERS; CLARIFYING OPTIONAL RETIREMENT ALLOWANCES; REQUIRING CERTIFICATION OF TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH THE INTERNAL REVENUE CODE; COMPLYING WITH THE FEDERAL HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008; AMENDING SECTIONS 19-20-101, 19-20-302, 19-20-305, 19-20-401, 19-20-409, 19-20-603, 19-20-605, 19-20-701, 19-20-702, 19-20-703, 19-20-718, 19-20-731, 19-20-804, 19-20-905, 19-20-1001, 19-20-1003, 20-15-106, AND 20-15-403, MCA; REPEALING SECTION 19-20-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the

amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means:

(a) the state of Montana;

(b) ~~the trustees of a public school~~ district, as provided in 20-6-101 and 20-6-701;

(c) the office of public instruction;

(d) the board of public education;

(e) an education cooperative;

(f) the Montana school for the deaf and blind, as described in 20-8-101;

(g) the Montana youth challenge program, as defined in 10-1-101;

(h) a state youth correctional facility, as defined in 41-5-103;

(i) the Montana university system;

(j) a community college; or

(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

(8) "Full-time service" means service that is:

(a) at least 180 days in a fiscal year; or

(b) at least 140 hours a month during 9 months in a fiscal year; or

(c) full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(11)~~(12) "Normal retirement age" means an age no earlier than ~~the age at which the member is eligible to retire:~~

- ~~_____ (a) by virtue of age, length of service, or both;~~
- ~~_____ (b) without disability; and~~
- ~~_____ (c) 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.~~

~~(12)~~(13) "Part-time service" means service that is less than ~~full-time~~ 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.~~

(14) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) "Retired member" means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) "Retirement allowance" means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(18) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(19) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the

employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a future retirement benefit.

(23) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary."

Section 2. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, ~~or~~ dean of students, or school psychologist ~~or~~;

~~(d) a person employed in a teaching or an educational services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;~~

~~(d)~~(e) a person who is an administrative officer or a member of the instructional staff of the board of public education;

~~(e)(f)~~ the superintendent of public instruction or a person employed as a teacher or in an instructional ~~educational~~ services capacity by the office of public instruction; ~~and~~

~~(f)(g)~~ except as provided in subsection (2), a person elected to the office of county superintendent of schools;

(h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and

(i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the

first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through ~~(1)(f)~~ (1)(i) is ineligible to be an active member of this system."

Section 3. Section 19-20-305, MCA, is amended to read:

"19-20-305. Alternate payees -- family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

~~(a)~~(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent ~~portion~~ amount or a fixed amount of the member's or retiree's retirement benefit;

~~(b)~~(c) "family law order" means a certified copy of a judgment, decree, or order of a court with competent

jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

~~(e)~~(d) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

~~(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).~~

~~—— (6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.~~

~~(7)~~(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as

determined by the formula in subsection (5)(b)(i).

~~(8)(7)~~ Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).

~~(9)(8)~~ Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

- (a) the date the participant begins receiving benefits; or
- (b) the first day of the month following receipt of a certified family law order.

~~(10)(9)~~ The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

~~(11)(10)~~ Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

~~(12)(11)~~ If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section."

Section 4. Section 19-20-401, MCA, is amended to read:

"19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;

~~(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;~~

~~(c)(b)~~ any out-of-state employment service awarded by the retirement board under the provisions of

19-20-402;

~~(d)~~(c) any service awarded for employment while on leave under 19-20-403;

~~(e)~~(d) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

~~(f)~~(e) any employment service awarded by the retirement board under the provisions of 19-20-408;

~~(g)~~(f) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

~~(h)~~(g) any service awarded by the retirement board for extension service employment under 19-20-410;

~~(i)~~(h) any service awarded for absence because of employment-related injury under 19-20-411; and

~~(j)~~(i) any service awarded for service purchased under 19-20-426.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time."

Section 5. Section 19-20-409, MCA, is amended to read:

"19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees'

retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A ~~vested~~ member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, ~~prior to becoming a member of the teachers' retirement system~~ may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has 5 years of membership service and has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member

contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system."

Section 6. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions -- options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified eligible retirement plan or a Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application

from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 7. Section 19-20-605, MCA, is amended to read:

"19-20-605. Pension accumulation account -- employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to:

—— ~~(a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and~~

—— ~~(b) beginning July 1, 2009, 9.85% of total earned compensation.~~

(3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.

(4) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(5) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(6) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(7) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(8) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration."

Section 8. Section 19-20-701, MCA, is amended to read:

"19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system ~~shall~~ must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code."

Section 9. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the ~~optional~~ allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A--the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

~~(d)(3) (a) Period certain and life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.~~

~~----- (i) The member shall elect one of the following certain time periods: In lieu of any other option available~~

in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

~~(A)~~(i) 10 years if the member is 75 years of age or younger at the time of retirement; or

~~(B)~~(ii) 20 years if the member is 65 years of age or younger at the time of retirement.

~~(ii)~~(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

~~(3)~~(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different beneficiary, ~~select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance if:~~

(i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

~~(4)~~(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different beneficiary or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must

revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

~~(5)(6)~~ The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

~~(6)(7)~~ The retired member shall file the written application required by subsection ~~(3)~~ (4) or ~~(4)~~ (5) with the board to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary."

Section 10. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a an inactive member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in ~~19-20-702(2)(d)(i)(A)~~ 19-20-702(3)(a)(i).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence."

Section 11. Section 19-20-718, MCA, is amended to read:

"19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or part 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue

Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments

would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code."

Section 12. Section 19-20-731, MCA, is amended to read:

"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits.

(1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

(i) the amount of health insurance premiums paid by the employer on the retired member's behalf;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member ~~has attained normal retirement age~~ would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member ~~has not attained normal retirement age but~~ is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) ~~If an early-retired~~ a retired member under 19-20-802 who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program."

Section 13. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. Upon termination, a member who ~~has attained normal retirement age~~ qualifies for benefits pursuant to 19-20-801 must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409."

Section 14. Section 19-20-905, MCA, is amended to read:

"19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed full-time by an employer covered under this chapter, the retiree ~~shall~~ must again become an active member of the retirement system. ~~Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.~~

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member."

Section 15. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated

by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804 ~~and section 5, Chapter 549, Laws of 1981~~ without reference to 19-20-715, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death or if a family law order has been issued, then:

(a) each beneficiary and alternate payee, if applicable, is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries."

Section 16. Section 19-20-1003, MCA, is amended to read:

"19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the

requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in ~~19-20-702(2)(d)(i)(A)~~ 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary."

Section 17. Compliance with federal act. With respect to a member's death occurring on or after January 1, 2007, while a member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member had resumed employment and then died and that are contingent on the member's death while employed.

Section 18. Section 20-15-106, MCA, is amended to read:

"20-15-106. Retirement systems for employees, and teachers, and administrators. (1) Teachers and administrators of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system pursuant to the provisions of Title 19, chapter 20.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system pursuant to Title 19, chapters 2 and 3."

Section 19. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district"

appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 20. Repealer. Section 19-20-406, MCA, is repealed.

Section 21. Codification instruction. [Section 17] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [section 17].

Section 22. Effective date. [This act] is effective July 1, 2009.

Section 23. Retroactive applicability. (1) The amendment to the definition of full-time service in 19-20-101 applies retroactively, within the meaning of 1-2-109, to full-time service on or after January 1, 2005.

(2) [Section 11] applies retroactively, within the meaning of 1-2-109, to pension year benefits beginning after January 1, 2001.

(3) [Section 17] applies retroactively, within the meaning of 1-2-109, to teachers' retirement system member deaths on and after January 1, 2008.

- END -

I hereby certify that the within bill,
HB 0059, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 59
INTRODUCED BY R. HAMILTON
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; REVISING LAWS TO COMPLY WITH THE PENSION PROTECTION ACT OF 2006; CLARIFYING DEFINITIONS; CLARIFYING WHO MUST BE A MEMBER OF THE SYSTEM; CLARIFYING FAMILY LAW ORDERS; CLARIFYING OPTIONAL RETIREMENT ALLOWANCES; REQUIRING CERTIFICATION OF TERMINATION OF EMPLOYMENT IN COMPLIANCE WITH THE INTERNAL REVENUE CODE; COMPLYING WITH THE FEDERAL HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008; AMENDING SECTIONS 19-20-101, 19-20-302, 19-20-305, 19-20-401, 19-20-409, 19-20-603, 19-20-605, 19-20-701, 19-20-702, 19-20-703, 19-20-718, 19-20-731, 19-20-804, 19-20-905, 19-20-1001, 19-20-1003, 20-15-106, AND 20-15-403, MCA; REPEALING SECTION 19-20-406, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.